



GSA's

NEPA Call-In Update

SUMMER 1999

NEPA Call-In is GSA's National Environmental Policy Act (NEPA)
information clearinghouse and research service.

NEPA Call-In
is designed to
meet the NEPA
compliance needs
of GSA's realty
professionals.

CEQ Approves NEPA Desk Guide

The GSA recently received final Council on Environmental Quality (CEQ) approval of its revised NEPA Orders and accompanying PBS NEPA Desk Guide. Section 1507.3 of the CEQ NEPA regulations provides that each agency shall adopt procedures as necessary to insure full compliance with NEPA's purposes and provisions. CEQ reviews and approves agency procedures for conformity with the Act and the CEQ

regulations. The following is an excerpt from the April 16, 1999 approval letter from Mr. Ray Clark, former Associate Director for NEPA Oversight, CEQ:

"The GSA regulations are complete, concise and comply with the National Environmental Policy Act and CEQ regulations. In fact, the regulations are extraordinary in many respects. They are highly readable and all the information a

user needs can be easily found in the easily accessible format. All the reviewers at CEQ gave the regulations high praise and suggested that they be made available to other agencies. The GSA can be justly proud of the NEPA Desk Guide. Please pass on my personal congratulations to all the staff who contributed to this Guide. It is a job well done."

Section 106 Regulations Revised

In 1992 Congress amended the National Historic Preservation Act, which mandated statutory changes to the existing Section 106 Regulations. The Advisory Council on Historic Preservation has published its final rule that replaces the existing regulations, thereby implementing the 1992 amendments. The final rule, effective June 17, 1999, modifies the process Federal agencies use in considering the effects of their actions on historic properties and also provide reasonable opportunity for the Council to comment with regard to such actions. To this end, several changes have been incorporated into the new regulations.

Section 800.8, "Coordination with the National Environmental Policy Act" provides for early coordination with the NEPA process. The revisions encourage Federal agencies to coordinate Section 106 compliance with any steps taken to meet the requirements of NEPA. This section also authorizes the use of Environmental Impact Statements/Records of Decision and Environmental Assessments/Findings of

No Significant Impact prepared under NEPA to meet Section 106 needs in lieu of procedures set forth in section 800.3 through 800.6. The Agency Official must notify, in advance, the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) and the Council that these are its intentions. If the Federal agency follows this process, it must also:

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Poll Studies Public's Understanding of Environmental Issues

Public participation in environmental projects is considered essential, be it through public meetings, report summaries, or newsletters and fact sheets. Project staff may be called upon to communicate the environmental costs and benefits of a project to a public that does not have an in-depth knowledge of environmental issues. To be an effective communicator, it is important to understand the public's knowledge base, attitudes, and perceptions of the environment. A recent study by the National Environmental Education Training Foundation (NEETF) asked Americans about environmental issues. Their responses may surprise you, and may be useful the next time you are called on to describe the results of your NEPA study at a public meeting.

Many Americans claim they possess some environmental knowledge. This year's NEETF survey found that 10% of the American public claim they have "a lot" and 58% claim they have "a fair amount" of knowledge about environmental issues and problems. Although the percentage stating they know a lot has remained unchanged over time, the percentage giving the "a fair amount" response has increased by 5% since 1996. Despite this increase, when asked to distinguish between environmental myths and environmental truths, many people had great difficulty. Not only do prevailing myths exist, but misconceptions are widespread on a number of current issues.

Presented with ten questions that each contained a myth answer, two plausible but incorrect answers, and a correct answer, the myth response was chosen by the majority of Americans surveyed in three out of the ten questions. In fact, when looking at the survey from the perspective of correctly identifying environmental truths, Americans averaged just 2.2 correct answers out of 10. There were few differences between subgroups, like education and income, which confirms the need for further environmental education for all Americans.

Environmental Myths vs. Environmental Knowledge

A majority of the public thinks (incorrectly) that in the U.S. energy is produced in ways that create no air pollution, mostly by hydroelectric power. Only one in three believes that coal burning is an issue.

Many Americans believe that spent fuel from nuclear plants goes deep underground to a storage area out West. Only one in six knows that permanent storage has yet to be found.

Only one in five Americans (22%) knows that storm water run-off is the most common form of pollution of streams,

rivers and oceans while nearly half (47%) think the most common form is waste dumped by factories.

Over half of Americans (56%) believe that beverage six-pack rings are the main cause of fish and wildlife entanglement. The main cause, however, is abandoned fishing line left by America's 70 million anglers, a fact known by only 10% of Americans.

Only 16% of Americans know that changing one's car oil is the main source of oil getting into our surface water. Most Americans (40%) think that the source is oil spills from ships and offshore oil wells.

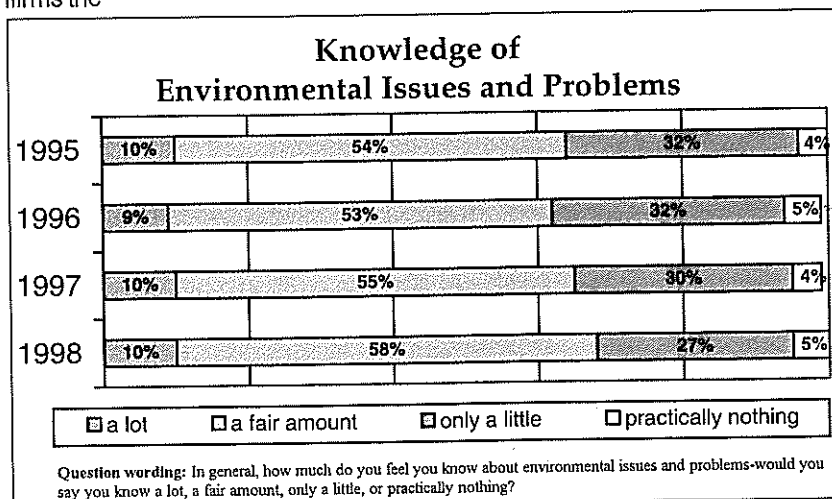
Approximately 33% of Americans are aware that CFCs are still in auto air conditioners and refrigerators. A surprising 32% of Americans believe that spray cans are the only source of CFCs in America today. Another 9% think Styrofoam cups are the only source of CFCs, and 20% responded that they do not know.

Almost one-quarter of Americans (23%) know that paper is the greatest source of landfill material. About 29% believe that the disposable diaper is the greatest threat to our landfills.

Support for Government Protection of the Environment

In general, Americans express a desire for the government to remain involved in environmental protection even though they may not believe all the information the government provides about the environment. Americans' attitudes toward the government's role in protecting the environment have remained stable over the past few years.

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Section 106 Regulations Revised, continued from page 1

- Identify consulting parties through the NEPA scoping process;
- Identify historic properties and assess the effects of the undertaking on such properties;
- Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council;
- Involve the public in accordance with the agency's published NEPA procedures; and
- Develop, in consultation with identified consulting parties, alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

This section goes on to further establish parameters for reviewing and commenting on the environmental document, and for the resolution of objections to the document.

A second major area of change in the Section 106 regulations is recognition of the Federal agency and SHPO decisionmaking capabilities in effective historic preservation. The Council will no longer review routine decisions agreed to by a Federal agency and the SHPO or in cases where an Indian tribe has assumed the responsibilities of the SHPO on its tribal lands through the THPO. The Council will direct its efforts and enter the process in situations where it determines that its involvement is necessary to ensure that the purposes of Section 106 and the Act are met. The Council is likely to enter the Section 106 process when an undertaking has substantial impacts on the important historic properties, presents important questions of policy or interpretation, has the potential for presenting compliance problems, or presents issues of concern to Indian tribes or Native Hawaiian organizations. The new revisions also provide that the Council place the emphasis of its review on assessing the overall quality of a Federal agency's or SHPO's performances in the Section 106 process, rather than on individual cases.

The 1992 amendments placed major emphasis on the role of Indian tribes and other Native Americans and made specific provisions for involving tribes when actions occur on tribal lands. The revisions provide Indian tribes with the same extent of involvement

as SHPOs have for actions within their states. This allows for involvement of the THPO in lieu of the SHPO when the THPO has assumed the responsibilities of the SHPO on tribal lands. The THPO is thereby provided with the opportunity to concur with decisions regarding significance of and effects on historic properties, including the treatment of those effects. This is formalized through inviting THPO's to sign Memoranda of Agreement. When an undertaking occurs off tribal land, the Federal agency only has to involve the tribe or Native Hawaiian organization as a consulting party.

In addition, the new regulations revise various parts of the Section 106 process itself. The Council has simplified the "no historic properties" and "no effect" determinations into a single "no historic properties affected" finding. This revision allows the agency to move directly to assessing adverse effects when it appears historic properties may be affected. The new regulations also introduce the concepts of phased identification and relating the level of identification to the nature of the undertaking and its likely impacts on historic properties. This will allow agencies to make preliminary decisions on alternative locations or alignments without having to conduct the more intensive identification efforts necessary to deal with the final design and siting a project.

The criteria for adverse effects have been revised to better define when a project has an adverse effect on a historic property. The revisions state that consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative. Current "exceptions" to the criteria relating rehabilitation of historic properties meeting the Secretary's Standard and transfer of Federal properties with preservation restrictions have been incorporated into the adverse effect criteria and have been expanded. Previously, most archeological data recovery qualified for a "No Adverse Effect" determination when appropriate data recovery was implemented. These cases will now be treated as adverse effects. Also, the new revisions give the SHPO/THPO the authority to review and concur with all "No Adverse Effect" determinations in place of Council review. However, if the Federal agency and the SHPO can not reach a solution to deal with the adverse effects, they are required to have the Council join the consultation and help the parties reach resolution. The Federal agency does not have to seek formal comments from the Council, as was the case in the 1986 regulations.

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Section 106 Regulations Revised, continued from page 3

Public participation has been clarified and simplified in the revisions to the Section 106 regulations. The new regulations allow for the use of agency procedures under NEPA or other program requirements in lieu of public involvement in Subpart B of the Section 106 regulations. Federal agencies should also seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. The new regulations also stress the importance of early effective public involvement in the Section 106 process.

There are many other modifications and refinements that cumulatively improve the operation of the Section 106 process. *This summary of major changes should in no way be considered comprehensive.*

**For more information on the revised
Section 106 Regulations, contact:**

NEPA Call-In: (202) 208-6228

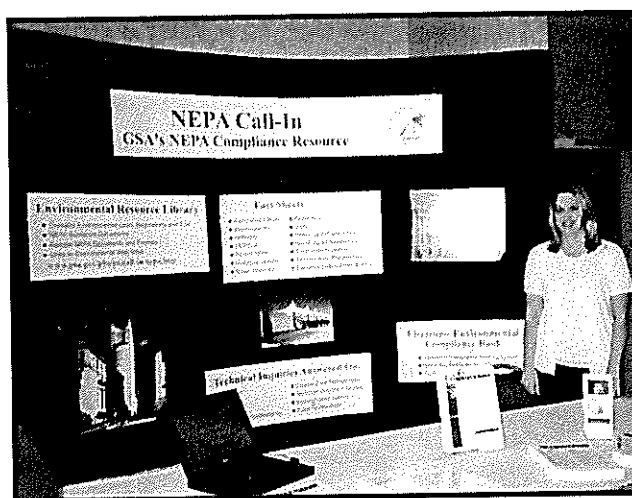
or

Mr. Javier Marqués

The Advisory Council on Historic Preservation
(202) 606-8503/jmarques@achp.gov

NEPA Call-In Attended the Second Annual Civilian Federal Agency's Environmental Symposium

NEPA Call-In attended the Second Annual Civilian Federal Agency's Environmental Symposium, sponsored by the EPA's Office of Enforcement Compliance Assurance, May 17-20, 1999, in Seattle, WA. Representing NEPA Call-In was Colin Wagner, GSA's NEPA Liaison, and Liz Estes, Environmental Specialist.



Poll Studies Public's Understanding, continued from page 2

Attitudes regarding current laws and regulations have also remained stable since 1995. Approximately 46% of Americans believe current laws do not go far enough and 17% say that the laws go too far. Gender and age differences exist here, with women and those under the age of 45 stating that current laws do not go far enough, and men and those 45 and over are more likely to say the current laws go too far.

Many Americans believe they are protected by the government in numerous public health and environmental situations. Most Americans (65%) assume that household and industrial chemicals are routinely tested by the Environmental Protection Agency or some other agency. Approximately 59% of Americans believe (incorrectly) that tap water is tested and filtered to remove contamination such as livestock waste and pesticides found in storm water runoff. More than half of Americans (51%) believe (incorrectly) that bottled water is tested for safety and purity by a government agency.

Environmental Activities Performed Day-to-Day

Many Americans perform activities each day that benefit the environment. Combined with concerns for and knowledge of the environment,

activities that benefit the natural world are the third point in the environment nexus (concern-education-behavior), a model identified in the 1996 and 1997 NEETF/Roper Surveys.

A majority of the public performs these top four environmental activities each day: turning off lights and electrical appliances when not in use (85%); recycling items such as newspaper, cans and glass (65%); cutting down on the amount of trash and garbage created (62%); and conserving water in the home and yard (61%). Other activities include helping a group improve fish and wildlife habitat, participating in a public land clean-up day; and doing volunteer work for a group that helps the environment.

Concern and knowledge of the environment have a definite effect on the likelihood of engaging in these day-to-day activities. Increasing environmental knowledge for all Americans should increase the individual involvement in environmental affairs, and should help Americans to understand the impact of decisions affecting the environment. Once the public understands the environmental information it is being provided, environmental myths will begin to disappear.

Interesting Technical Inquiries (TIs)

TI - 471

NEPA Call-In received a request for information on "conformity determinations" as they relate to the environmental impact analysis (EIA) process under the National Environmental Policy Act (NEPA). Specifically, the caller asked for a regulatory citation for a conformity determination.

NEPA Call-In first searched the Environmental Protection Agency (EPA) Office of Federal Activities world wide web site for references to "conformity determination." Our search resulted in several documents that recorded EPA's comments on various documents prepared under NEPA. In a document titled, "Summary of EPA Comments," August 8, 1997, EPA provided comments on a Draft Environmental Impact Statement (DEIS), stressing the potential need for an air quality conformity determination for carbon monoxide.

With information obtained above, we then searched the CAA on the U.S. Code library on the world wide web maintained by Cornell University's School of Law. Specifically, we searched the CAA for references to "conformity determination," which yielded Title 42 USC Section 7506, "Limitations on certain Federal assistance". In summary, this citation from the CAA sets limitations on Federal assistance to programs or actions that do not conform to State Implementation Plans approved under the CAA, 42 USC 7410.

In regard to how CAA conformity determinations relate to the EIA process under NEPA, a Federal agency should include a conformity determination as a component of any NEPA analysis conducted on proposed actions where there is potential for impacts to air quality.

TI - 478

The NEPA Call-In office recently received a request for guidance on public participation in regard to the issuance of a DEIS. Specifically, the caller wanted to know if GSA had to schedule a public participation meeting after the DEIS was filed with the EPA.

NEPA Call-In reviewed the Code of Federal Regulations (CFR) Title 40, Chapter V, "Council on Environmental Quality", parts 1500 through 1508 in regard to the inquiry (enclosed). Section 1503.1 (a) (4) "Commenting" states, "After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall: ... request comments from the public, affirmatively soliciting com-

ments from those persons organizations who may be interested or affected." Title 40 CFR Part 1503.4 "Response to Comments," states the agency preparing the final EIS must assess and consider all comments received and respond to them as outlined in this section. Part 1503.4 (b) further states that the agency must attach all substantive comments received on the DEIS.

NEPA Call-In also reviewed 40 CFR Part 1506.6, "Public Involvement," which states agencies shall hold or sponsor public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency, and make all NEPA documents available pursuant to the Freedom of Information Act (FOIA), in addition to several other specific requirements outlined in this section. Title 40 CFR 1506.6 (c) says agencies should hold or sponsor a public meeting if there is substantial environmental controversy concerning the proposed action, substantial interest in holding a public meeting, or if requested by another agency with jurisdiction over the action. In addition, no decision on the proposed action shall be made or recorded 90 days from the date of publication in the Federal Register and agencies shall allow no less than 45 days for comments on the DEIS, (40 CFR 1506.10 (b) (1)) and (40 CFR 1506.10 (c)).

NEPA Call-In then reviewed the NEPA Desk Guide, Interim Guidance, September 1997. The Desk Guide does not require a public meeting once the DEIS has been filed with the EPA, but section 4.2.1, "When Is Public Involvement Appropriate?" states that public involvement is appropriate during the review of the results of analyses. This public involvement can include a public meeting.

Therefore, NEPA Call-In found that it appears there is no requirement in the CEQ regulations to hold a public participation meeting after making the DEIS available to the public, but the NEPA Desk Guide states that public involvement is appropriate, which can include a public meeting. Further, the agency must allow at least 45 days for public comments on draft statements.

TI - 490

NEPA Call-In staff received a request for information about GSA's requirements for maintaining records related to the environmental impact analysis process. Specifically, it was requested to determine which offices are responsible for maintaining records such as environmental assessments (EAs), environmental impact statements (EISs) and related documents, and how long such documents must remain on file.

Interesting TIs (con'd)

NEPA Call-In first reviewed our factsheet, "Recommendations for Considering Historical Objects and Documents in Environmental Project Review," August 1998, for a summary of laws and regulations governing Federal records. This factsheet cites GSA's regulations for records management contained in GSA Order OAD P 1820.2A, "GSA Records Maintenance and Disposition System," June 22, 1994 (expires June 22, 2004).

We then reviewed GSA Order OAD P 1820.2A on the GSA document library maintained on the GSA intranet site, "Insite," for information about GSA's internal record maintenance procedures. The handbook contains instructions on administering the internal GSA records management program. Descriptions of and approved disposition instructions for records created or received by GSA program offices are contained in record schedules issued by the GSA Records Officer, and not found in this Order.

NEPA Call-In then reviewed record descriptions and approved disposition instructions issued by the GSA Records Officer and maintained by GSA's Administrative Policy and Information Management Division on the world wide web at <http://www.gsa.gov/staff/c/ca/cai/cai.htm>. By conducting a search of this site, we determined records related to NEPA and environmental issues are categorized in the GSA Records Disposition Schedule as Record Number 13E001, "Environmental records." This category of records has two separate disposition schedules: one for Central Office records and one for Regional Office records. According to the GSA Records Disposition Schedule, the disposition of each category is as follows:

1. National Office Record Copies—Environmental Records are temporary. These records should be placed in inactive files after review of the project is completed where they are to be held for two years. After two years, National Office Records may be destroyed.
2. Regional Record Copies—Environmental Records are Permanent. These records should be placed in inactive files upon project

completion. The records should be cut off after the end of the first fiscal year and held for five years in the Regional Office. After five years, these records should be retired to the Federal Records Center (FRC), where they are still under jurisdiction of the GSA region. When these records are ten years old, FRC should send them to the National Archives and Records Administration (NARA), where they become the property of NARA and are no longer under the jurisdiction of GSA.

We then contacted Records Management Officer at the GSA for additional information about GSA's records disposition system and Freedom of Information Act (FOIA) requests for documents at various stages in the records disposition system. The following response was provided:

"Our regulations state that each GSA Service and Staff Office must designate a records officer to operate the records management program within their area of jurisdiction. The office retiring the records should work with that officer in preparing the necessary paperwork to retire the records to the FRC. Once they are at the FRC, the FRC personnel will take care of sending the records to NARA (if records are permanent) or destroying them when scheduled. NARA will then notify the Agency Records Officer when any action is taken on those records."

If the records have been transferred to NARA as per our record schedule, then those records now belong to NARA and they have legal custody of the records. If a FOIA request comes into GSA for those records, the request should be sent to NARA for response. If the records are sitting at the FRC and have not been transferred, GSA still has legal custody of those records and will need to respond to the FOIA request. It may be that we would need to have the records pulled by the FRC and sent to us, or we could go over to the FRC to inspect and pull records."

NEPA Call-In is designed to meet the NEPA compliance needs of GSA's realty professionals.

Need more information?

Call NEPA Call-In

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